

ESTTA Tracking number: **ESTTA301457**

Filing date: **08/17/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	McDonald's Corporation
Granted to Date of previous extension	08/16/2009
Address	One McDonald's Plaza Oak Brook, IL 60523 UNITED STATES

Correspondence information	McDonald's Corporation One McDonald's Plaza Oak Brook, IL 60523 UNITED STATES jcullis@ngelaw.com, mturner@ngelaw.com, mbenson@ngelaw.com
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### Applicant Information

Application No	77511690	Publication date	02/17/2009
Opposition Filing Date	08/17/2009	Opposition Period Ends	08/16/2009
Applicant	McFest LLC 1644 N. Honore St. Chicago, IL 60603 UNITED STATES		

### Goods/Services Affected by Opposition

Class 041. First Use: 2007/04/10 First Use In Commerce: 2007/04/10  
All goods and services in the class are opposed, namely: Organizing, arranging, conducting, and producing concerts and live events

### Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	37 C.F.R. Section 2.51(a) an 37 C.F.R. Section 2.72(a)(1)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	743572	Application Date	05/04/1961
Registration Date	01/08/1963	Foreign Priority Date	NONE
Word Mark	MCDONALD'S		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U100 (International Class 042). First use: First Use: 1948/12/00 First Use In Commerce: 1953/05/06 Drive-In Restaurant Services

U.S. Registration No.	882245	Application Date	02/08/1968
Registration Date	12/09/1969	Foreign Priority Date	NONE
Word Mark	MC BURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U100 (International Class 042). First use: First Use: 1968/01/00 First Use In Commerce: 1968/01/00 RESTAURANT SERVICES		

U.S. Registration No.	939100	Application Date	07/22/1971
Registration Date	07/25/1972	Foreign Priority Date	NONE
Word Mark	MCDONALDLAND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U100 (International Class 042). First use: First Use: 1971/01/01 First Use In Commerce: 1971/01/01 RESTAURANT SERVICES		


U.S. Registration No.	1065885	Application Date	02/05/1976
Registration Date	05/17/1977	Foreign Priority Date	NONE
Word Mark	MC CHICKEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1975/06/16 First Use In Commerce: 1975/06/16 COOKED CHICKEN FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1266500	Application Date	06/21/1982
Registration Date	02/07/1984	Foreign Priority Date	NONE

Word Mark	MC DOUBLE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1977/06/30 First Use In Commerce: 1977/09/30 a Sandwich for Consumption On or Off Premises

U.S. Registration No.	1358486	Application Date	05/18/1984
Registration Date	09/03/1985	Foreign Priority Date	NONE
Word Mark	MCJOBS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1982/09/30 First Use In Commerce: 1982/09/30 TRAINING HANDICAPPED PERSONS AS RESTAURANT EMPLOYEES		


U.S. Registration No.	1418655	Application Date	04/11/1986
Registration Date	11/25/1986	Foreign Priority Date	NONE
Word Mark	MCSHUTTLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 039. First use: First Use: 1985/09/17 First Use In Commerce: 1985/09/17 TRANSPORTATION SERVICES, NAMELY PROVIDING GROUND TRANSPORTATION SERVICES		

U.S. Registration No.	1506327	Application Date	12/17/1987
Registration Date	09/27/1988	Foreign Priority Date	NONE
Word Mark	MC\$AVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1987/11/16 First Use In Commerce: 1987/11/16 ADMINISTERING AN EMPLOYEE SAVINGS PLAN		

U.S. Registration No.	1538551	Application Date	09/30/1987
Registration Date	05/09/1989	Foreign Priority Date	NONE
Word Mark	MC CHEF		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1986/11/20 First Use In Commerce: 1986/11/20 RESTAURANT SERVICES		

U.S. Registration No.	1550136	Application Date	11/23/1988
Registration Date	08/01/1989	Foreign Priority Date	NONE
Word Mark	MCCALEDAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1988/08/22 First Use In Commerce: 1988/11/02 CALENDAR		

U.S. Registration No.	1562702	Application Date	12/09/1987
Registration Date	10/24/1989	Foreign Priority Date	NONE
Word Mark	MCLODGE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1987/11/20 First Use In Commerce: 1987/11/20 HOTEL SERVICES		

U.S. Registration No.	1579598	Application Date	06/02/1989
Registration Date	01/23/1990	Foreign Priority Date	NONE
Word Mark	MCCLIP		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1985/10/02 First Use In Commerce: 1985/10/02 BARBER SHOP SERVICES


U.S. Registration No.	1582970	Application Date	02/21/1985
Registration Date	02/13/1990	Foreign Priority Date	NONE
Word Mark	MCTRAVEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 039. First use: First Use: 1985/01/31 First Use In Commerce: 1985/01/31 TRAVEL AGENCY SERVICES - NAMELY, BOOKING AIRLINE RESERVATIONS, ISSUING AIRLINE TICKETS AND MAKING RENTAL CAR RESERVATIONS Class 042. First use: First Use: 1985/01/31 First Use In Commerce: 1985/01/31 MAKING HOTEL RESERVATIONS		


U.S. Registration No.	1592145	Application Date	10/05/1989
Registration Date	04/17/1990	Foreign Priority Date	NONE
Word Mark	MC SHIRT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1989/07/06 First Use In Commerce: 1989/07/06 MEN'S CLOTHING, WOMEN'S CLOTHING AND CHILDREN'S CLOTHING - NAMELY, T-SHIRTS AND SWEATSHIRTS		

U.S. Registration No.	1592450	Application Date	08/21/1989
Registration Date	04/17/1990	Foreign Priority Date	NONE
Word Mark	MCPOOL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1989/07/06 First Use In Commerce: 1989/07/06 RECREATIONAL SERVICES IN THE NATURE OF PROVIDING SWIMMING FACILITIES		


U.S. Registration No.	1612825	Application Date	12/13/1989
Registration Date	09/11/1990	Foreign Priority Date	NONE
Word Mark	MC SHADES		


Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1989/10/25 First Use In Commerce: 1989/10/25 SUNGLASSES


U.S. Registration No.	1615841	Application Date	12/13/1989
Registration Date	10/02/1990	Foreign Priority Date	NONE
Word Mark	MCBUTTON		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 026. First use: First Use: 1989/10/25 First Use In Commerce: 1989/10/25 NOVELTY BUTTONS		

U.S. Registration No.	1635845	Application Date	05/24/1990
Registration Date	02/19/1991	Foreign Priority Date	NONE
Word Mark	MCPRODUCT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1989/10/16 First Use In Commerce: 1989/10/16 mail order services in the field of promotional novelty items		

U.S. Registration No.	1639570	Application Date	11/28/1989
Registration Date	04/02/1991	Foreign Priority	NONE

		Date	
Word Mark	MCRULER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1989/10/25 First Use In Commerce: 1989/10/25 STANDARD SIX INCH OR TWELVE INCH RULERS		

U.S. Registration No.	1648153	Application Date	07/27/1990
Registration Date	06/18/1991	Foreign Priority Date	NONE
Word Mark	MCPEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1989/10/25 First Use In Commerce: 1989/10/25 pens		

U.S. Registration No.	1654265	Application Date	07/27/1990
Registration Date	08/20/1991	Foreign Priority Date	NONE
Word Mark	MCLIGHT		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 011. First use: First Use: 1989/10/25 First Use In Commerce: 1989/10/25 flashlights		
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U.S. Registration No.	1735904	Application Date	07/23/1991
Registration Date	12/01/1992	Foreign Priority Date	NONE
Word Mark	MCFREE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1983/00/00 First Use In Commerce: 1985/00/00 chemical preparations to prevent and cure clogged drains		

U.S. Registration No.	1771347	Application Date	07/26/1990
Registration Date	05/18/1993	Foreign Priority Date	NONE
Word Mark	MCWATCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 1989/10/25 First Use In Commerce: 1989/10/25 watches		


U.S. Registration No.	1878115	Application Date	12/03/1993
Registration Date	02/07/1995	Foreign Priority Date	NONE
Word Mark	MCMERCHANDISE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1993/09/00 First Use In Commerce: 1993/09/00 mail order services featuring novelty items		

U.S. Registration No.	1926019	Application Date	01/29/1993
Registration Date	10/10/1995	Foreign Priority Date	NONE
Word Mark	MCBUDDY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1989/12/00 First Use In Commerce: 1989/12/00 non-monetary charitable services; namely, providing food, clothing, school supplies and the like to underprivileged children and families		

U.S. Registration No.	1947099	Application Date	08/08/1991
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Registration Date	01/09/1996	Foreign Priority Date	NONE
Word Mark	MC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1995/06/14 First Use In Commerce: 1995/06/14 restaurant services		

U.S. Registration No.	2360636	Application Date	01/22/1998
Registration Date	06/20/2000	Foreign Priority Date	NONE
Word Mark	MCSTORE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1998/10/00 First Use In Commerce: 1998/10/00 retail store services featuring general merchandise		


U.S. Registration No.	1435920	Application Date	08/21/1986
Registration Date	04/07/1987	Foreign Priority Date	NONE
Word Mark	GOSPELFEST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1983/05/23 First Use In Commerce: 1983/05/23 CHARITABLE FUNDRAISING SERVICES Class 041. First use: First Use: 1983/05/23 First Use In Commerce: 1983/05/23 ENTERTAINMENT SERVICES IN THE FORM OF SPONSORING AND PROMOTING GOSPEL MUSIC COMPETITIONS AND CONCERTS		

U.S. Registration No.	1438315	Application Date	05/19/1986
Registration Date	04/28/1987	Foreign Priority Date	NONE
Word Mark	RONALD MCDONALD		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 036. First use: First Use: 1966/09/00 First Use In Commerce: 1966/09/00 CHARITABLE FUND RAISING SERVICES Class 041. First use: First Use: 1966/09/00 First Use In Commerce: 1966/09/00 EDUCATIONAL AND ENTERTAINMENT SERVICES - NAMELY, PERFORMANCES BY AN INDIVIDUAL IN A CLOWN COSTUME AND DISTRIBUTION OF EDUCATIONAL AND DIVERSIONARY MATERIAL		
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U.S. Registration No.	1552323	Application Date	12/14/1988
Registration Date	08/15/1989	Foreign Priority Date	NONE
Word Mark	MCLOTS OF FUN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1988/05/30 First Use In Commerce: 1988/05/30 PROVIDING STAGE PRODUCTIONS FOR THE ENTERTAINMENT OF CHILDREN		

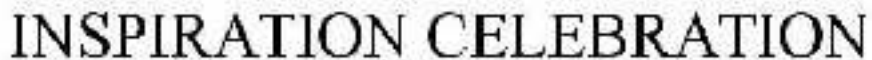
U.S. Registration No.	1681144	Application Date	05/04/1990
Registration Date	03/31/1992	Foreign Priority Date	NONE
Word Mark	BOOKIN' WITH RONALD MCDONALD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1988/06/02 First Use In Commerce: 1988/06/02 printed educational materials directed to teachers to encourage reading by their students Class 041. First use: First Use: 1988/06/02 First Use In Commerce: 1988/06/02 educational and entertainment services in the nature of conducting performances at school assemblies to encourage students to read, and providing materials to teachers in conjunction therewith		

U.S. Registration No.	3215376	Application Date	03/17/2006
Registration Date	03/06/2007	Foreign Priority Date	NONE
Word Mark	LOMCXIMO		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1999/01/31 First Use In Commerce: 1999/01/31 PROMOTING LIVE PERFORMANCES OF OTHERS IN THE FIELD OF DANCE, MUSIC, THEATRICALS AND SPORTING COMPETITION

U.S. Registration No.	3476240	Application Date	12/21/2007
Registration Date	07/29/2008	Foreign Priority Date	NONE

Word Mark	INSPIRATION CELEBRATION
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 041. First use: First Use: 2007/01/30 First Use In Commerce: 2007/01/30 ENTERTAINMENT SERVICES, NAMELY, ARRANGING AND CONDUCTING GOSPEL MUSIC COMPETITIONS AND LIVE CONCERT PERFORMANCES
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U.S. Registration No.	3493524	Application Date	05/22/2007
Registration Date	08/26/2008	Foreign Priority Date	NONE


Word Mark	A FRIENDSHIP ADVENTURE WITH RONALD MCDONALD
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 041. First use: First Use: 2006/09/30 First Use In Commerce: 2006/09/30 Educational and entertainment services in the nature of conducting live performances at schools and other educational and entertainment facilities by costumed characters
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U.S. Registration	3496763	Application Date	07/05/2007
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No.			
Registration Date	09/02/2008	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2006/09/30 First Use In Commerce: 2006/09/30 EDUCATIONAL AND ENTERTAINMENT SERVICES IN THE NATURE OF CONDUCTING LIVE PERFORMANCES AT SCHOOLS AND OTHER EDUCATIONAL AND ENTERTAINMENT FACILITIES BY COSTUMED CHARACTERS		

Attachments	72398083#TMSN.gif ( 1 page )( bytes ) 73701563#TMSN.gif ( 1 page )( bytes ) 73804079#TMSN.gif ( 1 page )( bytes ) 74010509#TMSN.gif ( 1 page )( bytes ) 74010504#TMSN.gif ( 1 page )( bytes ) 74062418#TMSN.gif ( 1 page )( bytes ) 74005584#TMSN.gif ( 1 page )( bytes ) 74082472#TMSN.gif ( 1 page )( bytes ) 74082469#TMSN.gif ( 1 page )( bytes ) 75421575#TMSN.gif ( 1 page )( bytes ) 78840264#TMSN.jpeg ( 1 page )( bytes ) 77358069#TMSN.jpeg ( 1 page )( bytes ) 77187393#TMSN.jpeg ( 1 page )( bytes ) 77222829#TMSN.jpeg ( 1 page )( bytes ) Notice_of_Opposition.pdf ( 9 pages )(112668 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Mike R. Turner/
Name	McDonald's Corporation
Date	08/17/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:  
Application Serial No. 77/511,690  
Published in the *Official Gazette*  
February 17, 2009

McDONALD’S CORPORATION,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
McFEST LLC,	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Opposer, McDONALD’S CORPORATION (“McDonald’s”), a corporation organized and existing under the laws of the State of Delaware, with offices at One McDonald’s Plaza, Oak Brook, Illinois 60523-1900, believes that it will be damaged by registration of the mark “McFEST” in International Class 41, as shown in Application Serial No. 77/511,690 filed by Applicant, McFest LLC (“Applicant”), and hereby opposes the same and requests that registration to Applicant be refused.

As grounds for its opposition, McDonald’s alleges that:

1. Applicant seeks to register a mark that consists of the term “McFest” for “organizing, arranging, conducting, and producing concerts and live events” in International Class 41 (hereinafter, “the McFEST mark” or “Applicant’s Mark”). The application is a use-based application filed under 15 U.S.C. § 1051(1)(a) claiming a first use date of April 10, 2007.
2. McDonald’s has obtained the necessary extensions of time in which to file this Notice of Opposition. Accordingly, this Notice of Opposition is being timely submitted.

3. Since 1955, McDonald's has been in the business of developing, operating, franchising, and servicing an extensive system of restaurants that prepare, package, and sell a wide variety of high quality, quickly-prepared, modestly-priced foods. McDonald's has carried on this business throughout the United States and the world. McDonald's and its subsidiaries now operate or license thousands of restaurants throughout the world, including over 14,000 restaurants in the United States.

4. In connection with this business, McDonald's has, for decades, extensively used its "Mc" family of marks, which includes the "Mc" formative used with various generic or descriptive terms, as trademarks and service marks in advertising, promoting and selling various food products and restaurant services. McDonald's even maintains a registration for the "Mc" mark alone. Over the past forty years, McDonald's has expanded its use of "Mc" formative marks across a wide variety of non-restaurant related goods and services. The following is a partial list of federal trademark registrations for "Mc" formative marks that McDonald's maintains:

<u>MARK NAME</u>	<u>REG. NO.</u>	<u>REG. DATE</u>	<u>GOODS/SERVICES</u>
1. McDONALD'S	743,572	01/08/1963	Restaurant services
2. McBURGER	882,245	12/09/1968	Restaurant services
3. McDONALDLAND	939,100	07/25/1972	Restaurant services
4. McCHICKEN	1,065,885	05/17/1977	Cooked chicken for consumption on or off the premises
5. McDOUBLE	1,266,500	02/07/1984	A sandwich for consumption on or off premises
6. McJOBS	1,358,486	09/03/1985	Training handicapped persons as restaurant employees

<u>MARK NAME</u>	<u>REG. NO.</u>	<u>REG. DATE</u>	<u>GOODS/SERVICES</u>
7. McSHUTTLE	1,418,655	11/25/1986	Transportation services; providing ground transportation services
8. McSAVE	1,506,327	09/27/1988	Administering an employee savings plan
9. McCHEF	1,538,551	05/09/1989	Restaurant services
10. McCALENDAR	1,550,136	08/01/1989	Calendars
11. McLODGE	1,562,702	10/24/1989	Hotel services
12. McCLIP	1,579,598	01/23/1990	Barbershop services
13. McTRAVEL	1,582,970	02/13/1990	Travel agency services; airline reservations, airline tickets, rental car reservations and hotel reservations
14. McSHIRT	1,592,145	04/17/1990	Men's clothing, women's clothing and children's clothing; t-shirts and sweatshirts
15. McPOOL	1,592,450	4/17/1990	Recreational services in the nature of providing swimming facilities
16. McSHADES	1,612,825	09/11/1990	Sunglasses
17. McBUTTON	1,615,841	10/02/1990	Novelty buttons
18. McPRODUCT	1,635,845	02/19/1991	Mail order services in the field of promotional novelty items
19. McRULER	1,639,570	04/02/1991	Standard six-inch or twelve-inch rulers
20. McPEN	1,648,153	06/18/1991	Pens
21. McLIGHT	1,654,265	08/20/1991	Flashlights
22. McFREE	1,735,904	12/01/1992	Chemical preparations to prevent and cure clogged drains
23. McWATCH	1,771,347	05/18/1993	Watches

<u>MARK NAME</u>	<u>REG. NO.</u>	<u>REG. DATE</u>	<u>GOODS/SERVICES</u>
24. McMERCHANDISE	1,878,115	02/07/1995	Mail order services featuring novelty items
25. McBUDDY	1,926,019	10/10/1995	Non-monetary charitable services; providing foods, clothing, school supplies, and the like to underprivileged children and families
26. Mc	1,947,099	01/09/1996	Restaurant services
27. McSTORE	2,360,636	06/20/2000	Retail store services featuring general merchandise

5. Each of the above registrations is at least *prima facie* evidence of the validity of each registration, of McDonald's ownership thereof, and of McDonald's exclusive right to use such registered mark on the goods or services set forth in the registration. These marks are all active, and were both in use and registered before Applicant's claimed date of first use of the McFEST mark.

6. McDonald's goods and services offered in association with its "Mc" formative marks are advertised and promoted throughout the United States. McDonald's extensive advertising and promotion of its various goods and services under its "Mc" formative family of marks features the use of television and print advertising, radio, newspaper and magazine advertising, outdoor billboard, Internet advertising and direct mail, all of which are directed to and reach the public in both local and nationwide markets. In addition, McDonald's uses its "Mc" formative family of marks on product packaging and point of purchase advertising.

7. As a result of the use, over many years, of various "Mc" formative marks such as those listed above, McDonald's has developed exceedingly valuable goodwill with respect to its "Mc" family of marks. Such use has caused consumers worldwide to associate composite terms



incorporating “Mc” with McDonald’s. As a result of its efforts, McDonald’s “Mc” family of marks is famous and was famous long prior to Applicant’s purported date of first use of the term “McFest.”

8. In addition, McDonald’s has, for many years, participated in the types of activities and offered the types of services which Applicant purports to have offered under the McFEST mark. Specifically, McDonald’s has been involved in “organizing, arranging, conducting, promoting and producing concerts and live events” since at least the mid-1980’s, as demonstrated by this partial list of federally registered marks, which McDonald’s also maintains:

<u>MARK NAME</u>	<u>REG. NO.</u>	<u>REG. DATE</u>	<u>GOODS/SERVICES</u>
1. GOSPELFEST	1,435,920	04/07/1987	Charitable fundraising services; Entertainment services in the form of sponsoring and promoting gospel music competitions and concerts
2. RONALD McDONALD	1,438,315	04/28/1987	Educational and entertainment services – namely performances by an individual in a clown costume and distribution of educational and diversionary material
3. McLOTS OF FUN	1,552,323	08/15/1989	Providing stage productions for the entertainment of children
4. BOOKIN’ WITH RONALD MCDONALD	1,681,144	03/31/1992	Educational and entertainment services in the nature of conducting live performances and printed educational materials directed to teachers to encourage reading by their students

<u>MARK NAME</u>	<u>REG. NO.</u>	<u>REG. DATE</u>	<u>GOODS/SERVICES</u>
5. LOMCXIMO	3,215,376	03/06/2007	Promoting live performances of others in the field of dance, music, theatrics and sporting competition
6. INSPIRATION CELEBRATION	3,476,240	07/29/2008	Entertainment Services, namely, arranging and conducting Gospel music competitions and live concert performances
7. A FRIENDSHIP ADVENTURE WITH RONALD MCDONALD	3,493,524	08/26/2008	Educational and entertainment services in the nature of conducting live performances at schools and other educational and entertainment facilities by costumed characters
8. (miscellaneous Ronald McDonald design)	3,496,763	09/02/2008	Educational and entertainment services in the nature of conducting live performances at schools and other educational and entertainment facilities by costumed characters

9. Each of the aforesaid registrations is at least *prima facie* evidence of the validity of each registration, of McDonald's ownership thereof, and of McDonald's exclusive right to use such registered mark on the goods or services set forth in the registration. These marks are all active, and were in use before Applicant's claimed date of first use of the McFEST mark. More importantly, they indicate McDonald's offering of the types of services Applicant purports to offer.

10. Despite McDonald's long-standing prior rights in its "Mc" family of marks and its active participation in and association with the type of services Applicant purports to offer, Applicant filed its trademark application on or about June 30, 2008, to register the McFEST mark for organizing, arranging, conducting, promoting and producing concerts and live events.

11. Applicant's advertising and use of the term "McFest" will inevitably reach the same consumers that McDonald's targets with its use of its famous "Mc" family of marks.

12. Consumers, upon seeing the term "McFest" used in connection with Applicant's concerts and live events, are likely to mistakenly believe that such a term and the services provided in connection with it originated with or are connected with, sponsored by, associated with, or licensed or approved by McDonald's. Thus, the registration and use by Applicant of the McFEST mark in connection with the recited services is likely to cause confusion, mistake, or deception in violation of 15 U.S.C. § 1052(d).

13. Issuance of a registration to Applicant for the McFEST mark would also diminish the distinctive quality of McDonald's rights in its famous "Mc" family of marks and would blur and otherwise impair the distinctiveness of this family of marks, in violation of 15 U.S.C. § 1125(c). In addition, should Applicant's concerts and live events depart from the family-friendly atmosphere McDonald's strives to offer and convey, Applicant's use of the McFEST mark may also tarnish the good image of McDonald's famous "Mc" family of marks, and would thereby cause harm to McDonald's reputation in violation of 15 U.S.C. § 1125(c).

14. If a registration is issued to Applicant for the McFEST mark, the confusion with McDonald's marks would result in damage and injury to McDonald's and the public. Registration of this term would give Applicant an unqualified right to wrongfully appropriate McDonald's valuable goodwill and reputation associated with McDonald's marks; to benefit from the likely confusion among purchasers led to believe that Applicant's services are related in some fashion to McDonald's; to dilute the distinctiveness of McDonald's marks and harm its goodwill and reputation associated with its marks; to tarnish McDonald's good name by offering confusingly similar goods and services not subject to McDonald's quality controls; and to restrict the natural growth of McDonald's "Mc" family of marks.

15. On information and belief, Applicant's application, as amended, purports to claim rights in MC FEST, *i.e.*, the drawing of the mark appears as two distinct words. However, the specimen of use on file shows only use of "McFest" as a single word. Thus, the drawing of the mark is not an exact representation of the mark as used on or in connection with the services purportedly offered, as required by 37 C.F.R. § 2.51(a). Furthermore, the specimen on file does not support the amendment to the application in violation of 37 C.F.R. § 2.72(a)(1).

16. On information and belief, Applicant's purported use of the term "McFest" has been isolated to a small area within Chicago, Illinois, and therefore cannot qualify as "use in commerce" as that term is defined in 15 U.S.C. § 1127. Accordingly, Applicant's purported use cannot qualify it for registration as filed under 15 U.S.C. § 1051(a).

WHEREFORE, McDonald's requests that this Opposition be sustained and Application Serial No. 77/525,097 be refused registration.

Please charge the fee of \$300 and any additional fees related to this matter to Deposit Account No. 502261.

Respectfully submitted,  
McDONALD'S CORPORATION

Date: August 17, 2009

By:           /John A. Cullis /            
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### **CERTIFICATE OF TRANSMISSION**

I hereby certify that the foregoing ***Notice of Opposition*** is being electronically transmitted via the Electronic System for Trademark Trials and Appeals (“ESTTA”) at <http://estta.uspto.gov/> on the date noted below:

Date: August 17, 2009

By: /Mike R. Turner/  
One of the Attorneys for McDonald’s Corporation

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### **CERTIFICATE OF SERVICE**

I, Mike R. Turner, state that I served a copy of the foregoing ***Notice of Opposition*** upon the Applicant for Application Serial No. 77/511,690 at its address of record as listed with the USPTO:

McFest LLC  
1644 N. Honore St.  
Chicago, IL 60603

via First Class Mail in accordance with Trademark Rule §§ 2.201 and 2.119 on this 17th day of August, 2009.

/ Mike R. Turner /  
Mike R. Turner

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